

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5208 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

STATE OF GUJARAT

Versus

SAVITABEN NATVARLAL PATEL

Appearance:

MR UA TRIVEDI, AGP for Petitioners
MR PJ VYAS for Respondent No. 1
Respondent No. 2 served

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 18/09/98

ORAL JUDGEMENT

1. Rule. Mr. P.J. Vyas, learned counsel appearing for respondent No.1 waives service of rule on behalf of respondent No.1. Respondent No.2 is served. With the consent of the parties, the petition is finally heard.
2. The brief facts necessary for the present purposes are that Competent Officer under the Urban Land

(Ceiling & Regulations) Act, 1976 by order dated 20th February, 1993 held that the declarant Savitaben, respondent No.1 here, is holding 7154 sq. meters of land in excess of ceiling limit. Savitaben had filed a declaration under Sec. 6 that she held 8654 sq. meters of land, part of which was constructed, and part of which was agricultural land. She has two major sons. The land in question was inherited by her from her father Dahyabhai. Against the order of the competent Officer, said Savitaben filed Appeal before the Tribunal under Section 33 of the Act. Amongst other grounds question was also raised by the holder as to existence of two major sons and that she is entitled to two separate units for her two major sons. If three units are granted there is no surplus in the land.

3. This plea found favour with the Tribunal on the ground that the land is an ancestral one, in which sons have right and interest by birth and, therefore, without determining other questions, allowed the appeal by the impugned order dated 8th January, 1997.

4. Learned Additional Government Pleader urges that as the property was inherited by daughter from her father and that too after the commencement of Hindu Succession Act, would not become ancestral property in her hands in which sons would get interest by birth. The property acquired by her would be her absolute and self acquired and would not be the property of Hindu undivided family, of which she is a member by marriage. Therefore, the Tribunal has apparently erred in considering the property to be ancestral one and only on that basis allowing two additional units for two major sons of Smt. Savitaben.

5. Learned counsel for the respondent No.1 urges that Smt. Savitaben has thrown her property in common hotchpotch of Hindu undivided family and, therefore, the finding reached by the Tribunal is justified.

6. Having carefully considered the rival submissions, I am of the opinion that, the contention on behalf of the petitioners - State is well founded. The property inherited by a female whether under the shastric Hindu Law as it operated prior to commencement of Hindu Succession Act, 1956 or after commencement of the Hindu Succession Act by itself does not become ancestral property in which her children take interest by birth. In no circumstance, the property as a result of inheritance inherited by a female becomes an ancestral property so as to be subject to unobstructed heritage in which male child gets. Nor such property which is her

stridhan becomes property of Hindu undivided family of which her husband and children are members to be shared by them by marriage only. No incidence of property belonging to Hindu undivided family is attached to it except if the same is acquired by Hindu undivided family by transfer inter vivos or in any other manner known to law.

7. Sub-sec. (7) of Section 4 operates in the case where a person is a member of a Hindu undivided family. In that event so much of the vacant land and of any other land on which there is a building with a dwelling unit thereon, as would have fallen to his share had the entire vacant land and such other land held by the Hindu undivided family been partitioned amongst its members at the commencement of this Act shall also be taken into account in calculating the extent of vacant land held by such member of the Hindu undivided family. For operation of this provision, the existence of Hindu undivided family and the vacant land held by such Hindu undivided family liable for partition are conditions precedent. As the property in question cannot be said to be property belonging to Hindu undivided family property or ancestral property of coparcenary march on the basis of mother inheriting it from her father, the applicability of sub-sec(7) of Section 4 merely on that ground cannot be sustained.

8. So far as plea of throwing the property in common hotchpotch by Smt. Savitaben is concerned, no such plea appears to have been taken before the Tribunal nor it has been discussed in the order. In fact, the Tribunal's order is not founded on any such premise. The plea further raises mixed question of law and fact. Any such evidence to establish factum of throwing the property in common hotchpotch also does not appear to have been led. The plea therefore cannot be entertained at this stage for the first time. Thus, the order as such cannot be sustained on the ground on which it is founded.

9. As the Tribunal has not discussed other contentions raised before it in view of its finding about the extent of units permissible in the case of Savitaben by holding the property to be of HUF and that finding is not sustainable, it is only appropriate to set aside the impugned order and direct the Tribunal to decide the Appeal afresh in accordance with law.

10. The petition is allowed. The impugned order is set aside. The Tribunal is directed to decide the Appeal afresh in accordance with law on other issues. Rule is made absolute. No order as to costs.

p.n.nair